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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the
Use of SHORESIDE PETROLEUM, INC.,
d/b/a Marathon Fuel Service, on its
own behalf,

Plaintiffs,

COPY

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,
Defendants.

Case No. A98-009 CV (HRH)

CONFIDENTIAL

30(B)(6) DEPOSITION OF NORTH STAR

Jeff Bentz

Taken March 28, 2006

Commencing at 1:00 p.m.

Volume I - Pages 1 - 55, inclusive

Taken by the Defendant
at

OLES, MORRISON, RINKER & BAKER
745 W. Fourth Av., Suite 502
Anchorage, AK 99501

Reported by: Susan J. Warnick, RPR

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1 APPEARANCES
 2 For Plaintiff - Shoreside Petroleum, Inc.:
 3 LAW OFFICES OF STEVEN J. SHAMBUREK
 4 BY: Steven J. Shamburek
 4 425 G Street, Suite 630
 5 Anchorage, AK 99501
 5 (907) 522-5339
 6 For Defendant - Nugget Construction:
 7 OLES, MORRISON, RINKER & BAKER
 8 BY: Thomas Krider
 8 745 W. Fourth Avenue, Suite 502
 9 Anchorage, AK 99501
 9 (907) 258-0106
 10 For ADF&G:
 11 BAROKAS, MARTIN & TOMLINSON
 12 BY: Herbert A. Viergutz
 12 1029 W. Third Av., Suite 280
 13 Anchorage, AK 99501
 13 (907) 277-3533
 14 For North Star:
 15 BURR, PEASE & KURTZ
 16 BY: Michael Sewright
 16 810 N Street
 17 Anchorage, AK 99501
 17 (907) 276-6100
 18
 19 BE IT KNOWN that the aforementioned deposition was taken
 20 at the time and place duly noted on the title page, before
 21 Susan J. Warnick, Registered Professional Reporter and
 22 Notary Public within and for the State of Alaska.
 23
 24
 25

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1 (Exhibit I marked.)
 2 PROCEEDINGS
 3 JEFF BENTZ,
 4 called as a witness herein, being first duly sworn to
 5 state the truth, the whole truth and nothing but the truth
 6 by the Notary, testified under oath as follows:
 7 EXAMINATION
 8 BY MR. KRIDER:
 9 Q Mr. Bentz, would you please state and spell your name
 10 for the record?
 11 A Jeff Bentz, B-e-n-t-z.
 12 Q Mr. Bentz, my name is Tom Krider. I'm the attorney
 13 for Nugget and U.S. F&G in this matter, and I'm going to
 14 hand you what was previously marked as Exhibit No. 1 and
 15 ask you whether or not you have seen that document before?
 16 MR. SEWRIGHT: Mr. Krider, the document you have
 17 handed the witness is Notice of a 30(b)(6) Deposition of
 18 Plaintiff North Star, and I want to point out that the
 19 subject matter or the inquiry areas in that notice of
 20 deposition have all been designated confidential, so this
 21 deposition should be designated confidential.
 22 And part of the reason I mention that is when
 23 the damages calculations was provided, I did send an
 24 e-mail --
 25 MR. KRIDER: Correct.

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1 MR. SEWRIGHT: -- designating it confidential.
 2 And then the second inquiry area of that notice is the
 3 documents attached as Exhibit A.
 4 MR. KRIDER: Correct.
 5 MR. SEWRIGHT: And those documents also had --
 6 they actually had a confidential sticker on them, and
 7 somehow it's disappeared in your copies of these
 8 documents. I don't know how that happened. But here's
 9 how it was provided. Let's see, for example, the first
 10 page had confidential on it (indicating). So all I'm
 11 saying is how those confidential stamps disappeared is not
 12 the issue. What I'm pointing out is that they were
 13 stamped confidential, so I would assume since that the
 14 subject matter of the deposition that's the whole
 15 deposition should just be designated confidential.
 16 MR. KRIDER: I have no objection to that.
 17 BY MR. KRIDER:
 18 Q So, Mr. Bentz, the original question was: Have you
 19 seen the notice of deposition before?
 20 A I believe so.
 21 Q And have you been designated today on behalf of
 22 plaintiffs to testify with regard to item number one in
 23 the notice of deposition?
 24 MR. SEWRIGHT: Object to the characterization.
 25 You said plaintiffs.

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1 BY MR. KRIDER:
 2 Q By plaintiff North Star, to respond and testify with
 3 regard to item number one?
 4 A Yes.
 5 Q And have you been designated by plaintiff North Star
 6 to testify today with regard to item number two?
 7 A Yes.
 8 Q Mr. Bentz, what did you do in preparation for your
 9 deposition today with regard to item number one?
 10 A Well, I didn't receive this until yesterday, and I
 11 read this.
 12 Q Did you do anything else in preparation for your
 13 deposition today?
 14 A I read the attached document. And I believe that's
 15 about all. Had lunch with Mike.
 16 Q Did you speak to anybody other than counsel about the
 17 items listed in number one to be testified to today?
 18 A Did I talk to anybody? How so?
 19 Q Other than counsel?
 20 MR. SEWRIGHT: You mean, since he received the
 21 notice?
 22 MR. KRIDER: Correct.
 23 THE WITNESS: No.
 24 BY MR. KRIDER:
 25 Q Item number one requests somebody available today to

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1 MR. KRIDER: Are you instructing him not to
2 answer?

3 MR. SEWRIGHT: Let's take a break. I may.
4 Let's take a break. You had that opportunity; your law
5 firm did. Let's take a break.

6 MR. KRIDER: Off the record.
7 (Recess taken.)

8 MR. SEWRIGHT: Mr. Krider, I'm going to allow
9 the witness to respond, but I make these two objections:
10 One, you're taking an item out of context. It's hard for
11 the witness to relate, but I believe he does have an
12 understanding.

13 Secondly, this is definitely -- other than for
14 the more definite calculation, this is clearly an area
15 that your law firm had an opportunity to inquire into back
16 in November -- and did inquire into, I might add.

17 BY MR. KRIDER:

18 Q Mr. Bentz, for your damages calculation on tortious
19 interference of North Star's agreements, I would like to
20 know what agreements you're referring to.

21 MR. SEWRIGHT: Also object to form of question,
22 calls for a legal conclusion. This is a calculation of
23 damages.

24 THE WITNESS: The agreements that we feel we had
25 to do the work.

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1 BY MR. KRIDER:

2 Q The agreements with whom?

3 A Well, we feel we had agreements with Nugget, but
4 obviously that's why we're here. So if not on our
5 assumption with our having contracts with Nugget, then
6 interference with the contracts that we had in place with
7 Spencer.

8 Q And if you think there was a contract with Nugget,
9 what were the terms of that agreement?

10 A No different than that of Spencer.

11 MR. SEWRIGHT: Counsel, I'm going to have a
12 continuing objection to this for the reasons stated
13 before. And at some point I will instruct the witness not
14 to answer. You're getting into the whole status of the
15 basis of the claim as opposed to the calculation of
16 damages, which is the only new information.

17 MR. KRIDER: And it applies exactly to how
18 damages are calculated

19 MR. SEWRIGHT: I disagree, but...

20 BY MR. KRIDER:

21 Q And so what was your understanding of the terms of
22 the agreement with Spencer?

23 A That we would get paid for the work, for moving the
24 rock.

25 Q How much?

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1 A It was on time and materials.

2 Q It says here that you are seeking a principal sum of
3 \$51,926.16 [sic]; is that correct?

4 MR. SEWRIGHT: \$27.

5 BY MR. KRIDER:

6 Q \$51,927.16; is that correct?

7 A That's correct.

8 Q Is that still the amount as we sit here today?

9 A Yes. No, not necessarily.

10 Q How so not necessarily?

11 A Time is going by. Interest, attorney fees.

12 Q Is the principal sum changing?

13 A No.

14 Q That was my question, Mr. Bentz: Is the principal
15 sum, as we sit here today, from what it was when this was
16 issued?

17 A No.

18 Q It says that essentially you want the principal sum
19 plus statutory prejudgment interest on that principal sum
20 at a rate of 10 and a half percent per annum and Rule 82
21 court-awarded attorneys' fees upon those sums.

22 Do you see that?

23 A I see that.

24 Q Do you have any other basis to believe that you'd be
25 entitled to attorneys' fees on this principal amount,

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1 other than the Rule 82 court-awarded fees?

2 MR. SEWRIGHT: Object to the form of the
3 question, foundation, calls for a legal conclusion. I'm
4 the attorney here; Mr. Bentz is not.

5 MR. KRIDER: I'm asking if he has any
6 understanding as to another basis for an award of
7 attorneys' fees.

8 THE WITNESS: I'm not certain. This is what I'm
9 aware of. There may be.

10 BY MR. KRIDER:

11 Q So is it North Star's position, Mr. Bentz, that it is
12 entitled to be paid profit for the 35,866 tons of rock
13 that were loaded at the other dock in Seward?

14 A Want to rephrase that?

15 Q Is it North Star's position that it is entitled to
16 its lost profits on 35,866 tons of rock that were loaded
17 out at the other dock?

18 A Yes.

19 Q And what's your basis for believing that you're
20 entitled to those lost profits?

21 MR. SEWRIGHT: Objection to the form of the
22 question, calls for a legal conclusion.

23 THE WITNESS: We were hired to load the rock
24 onto the barges. And at some point in time during the
25 process we no longer were loading the rock on the barges.